

109TH CONGRESS
1ST SESSION

H. R. 3449

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2005

Mrs. MALONEY (for herself, Mr. SANDERS, Mr. FRANK of Massachusetts, and Ms. LEE) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Overdraft
5 Protection Fair Practices Act”.

6 **SEC. 2. RESTRICTIONS ON OVERDRAFT PROTECTION PRO-**
7 **GRAMS OR SERVICES.**

8 (a) TRUTH IN LENDING ACT AMENDMENTS.—

9 (1) DEFINITION.—Section 103 of the Truth in
10 Lending Act (15 U.S.C. 1602) is amended by add-
11 ing at the end the following new subsection:

12 “(cc) TERMS RELATING TO SHORT-TERM EXTEN-
13 SIONS OF CREDIT UNDER OVERDRAFT PROTECTION PRO-
14 GRAMS.—

15 “(1) OVERDRAFT PROTECTION FEE.—The term
16 ‘overdraft protection fee’ means any fee or charge
17 imposed in connection with any account on which
18 checks or other debits are paid by the institution in
19 which such account is held even though there are in-
20 sufficient funds in the account to cover such checks
21 or other debits, unless such fee or charge—

22 “(A) is imposed on an incidental basis as
23 a customer accommodation and no more than 3
24 such overdraft fees are imposed during any cal-
25 endar year;

1 “(B) is imposed in connection with an ex-
2 tension of credit to a transaction account of a
3 consumer under a written open end consumer
4 credit plan the purpose of which is to cover any
5 check presented against, electronic fund trans-
6 fer from, or other debit of the account for the
7 payment of which there are insufficient funds in
8 the account; or

9 “(C) has been disclosed in connection with
10 a program under which the overdraft is covered
11 by funds transferred from another deposit,
12 share, or other asset account.

13 “(2) OTHER TERMS.—

14 “(A) CHECK.—The term ‘check’ has the
15 same meaning as in section 3(6) of the Check
16 Clearing for the 21st Century Act.

17 “(B) OTHER DEBITS.—The term ‘other
18 debits’ includes withdrawals from an account by
19 the consumer through an automated teller ma-
20 chine and electronic fund transfers from an ac-
21 count that are initiated or authorized by the
22 consumer.

23 “(C) ELECTRONIC FUND TRANSFER.—The
24 term ‘electronic fund transfer’ has the same
25 meaning as in section 903.

1 “(D) ACCOUNT.—The term ‘account’
2 means any account intended for use by and
3 generally used by a consumer primarily for per-
4 sonal, family, or household purposes into which
5 the consumer deposits funds.

6 “(E) TRANSACTION ACCOUNT.—The term
7 ‘transaction account’ has the same meaning as
8 in section 19(b)(1)(C) of the Federal Reserve
9 Act.”.

10 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
11 PROGRAMS OR SERVICES.—

12 (A) IN GENERAL.—Chapter 2 of the Truth
13 in Lending Act (15 U.S.C. 1631 et seq.) is
14 amended by adding at the end the following
15 new section:

16 **“§ 140. Restrictions on overdraft protection programs**
17 **or services**

18 “(a) IN GENERAL.—In the case of any transaction
19 account of a consumer at any institution, no overdraft pro-
20 tection fee may be imposed on such account for any exten-
21 sion of funds by the institution to cover any check or other
22 debit for which there are insufficient funds in the con-
23 sumer’s account to pay such check or other debit, unless—

24 “(1) the consumer has provided specific written
25 consent to any program or service that provides for

1 charging of such fees in connection with any such
2 extension of funds;

3 “(2) such fee is imposed pursuant to the terms
4 of a written agreement with the consumer which dis-
5 closes, in a clear and conspicuous manner—

6 “(A) the amount of any fee imposed in
7 connection with paying an overdraft;

8 “(B) any applicable disclosure required by
9 this title in connection with such extension of
10 credit, including the amount of the finance
11 charge in connection with such fee or fees, as
12 required by section 106;

13 “(C) the categories of transactions for
14 which a fee for payment of an overdraft may be
15 imposed, including whether an overdraft created
16 by withdrawals at automated teller machines or
17 other electronic fund transfers will be covered
18 and a fee imposed;

19 “(D) the time period by which the con-
20 sumer must repay or cover any extension of
21 credit in the form of payment of an overdraft;
22 and

23 “(E) the circumstances under which the
24 institution in which an account is held will not
25 pay an overdraft; and

1 “(F) other information required to be dis-
2 closed by regulation;

3 “(3) such fee is separately and conspicuously
4 disclosed, each time the fee is imposed, in any peri-
5 odic statement provided to the consumer with re-
6 spect to such account.

7 “(b) CLARIFICATION RELATING TO OVERDRAFT
8 FEES.—In the case of any transaction account of a con-
9 sumer at any institution, the prohibition against an over-
10 draft protection fee under subsection (a) shall apply re-
11 gardless of whether the amount of such fee is the same
12 as, or less than, any fee imposed by the institution with
13 respect to such account for a check or other debit that
14 is returned unpaid.

15 “(c) PROHIBITION ON MISREPRESENTATIONS.—If
16 any institution—

17 “(1) will not extend funds under specific cir-
18 cumstances to cover an overdraft in any transaction
19 account of a consumer at the institution; or

20 “(2) reserves the right to extend funds to pay
21 any such overdraft on a discretionary basis,
22 any representation by such institution that the institution
23 will extend credit to cover all overdrafts on such account
24 shall be a violation of this title.”.

1 (B) CLERICAL AMENDMENT.—The table of
2 sections for chapter 2 of the Truth in Lending
3 Act is amended by inserting after the item re-
4 lating to section 139 the following new item:

“140. Restrictions on overdraft protection programs or services.”.

5 (3) RESTRICTIONS ON ADVERTISING OF OVER-
6 DRAFT PROTECTION PROGRAMS OR SERVICES.—

7 (A) IN GENERAL.—Chapter 3 of the Truth
8 in Lending Act (15 U.S.C. 1661 et seq.) is
9 amended by adding at the end the following
10 new section:

11 **“§ 148. Restrictions on advertising of overdraft pro-**
12 **tection programs or services**

13 “(a) IN GENERAL.—In the case of an institution that
14 maintains transaction accounts for consumers and offers
15 a program or service under which the institution pays any
16 overdraft on the account in exchange for payment of an
17 overdraft protection fee, the institution may not make any
18 of the following representations or statements with respect
19 to such program or service in any advertisement or pro-
20 motion:

21 “(1) Any representation or statement describing
22 a transaction account as free or no cost if the ac-
23 count includes, or is promoted as including, over-
24 draft protection services that involve the payment of
25 overdraft protection fees.

1 “(2) Any representation or statement encour-
2 aging use of the account as a service to meet short-
3 term credit needs or to obtain advances on a con-
4 sumer’s next payment of salary or wages.

5 “(3) Any representation or statement that the
6 financial institution will honor all checks or other
7 debits presented against the account, if the institu-
8 tion retains discretion at any time not to honor any
9 check or other debit presented.

10 “(4) Any representation or statement that con-
11 sumers may overdraw their accounts and maintain a
12 negative balance, if the terms of the account require
13 the consumer to promptly repay or cover any over-
14 draft.

15 “(b) REGULATIONS.—The Board shall prescribe reg-
16 ulations implementing the restrictions set forth in sub-
17 section (a) pursuant to the authority of the Board under
18 section 18(f) of the Federal Trade Commission Act, and
19 may, by regulation or order, restrict such additional acts
20 or practices that the Board finds to be unfair or deceptive
21 in connection with the offering, operation, and advertising
22 of overdraft protection programs and services.”.

23 (B) CLERICAL AMENDMENT.—The table of
24 sections for chapter 3 of the Truth in Lending

1 Act is amended by inserting after the item re-
2 lating to section 147 the following new item:

“148. Restrictions on advertising of overdraft protection programs or services.”.

3 (4) CLARIFICATION OF FINANCE CHARGE.—
4 Section 106(a) of the Truth in Lending Act (15
5 U.S.C. 1605(a)) is amended by adding at the end
6 the following new paragraph:

7 “(7) Overdraft protection fee.”.

8 (b) ELECTRONIC FUND TRANSFER ACT AMEND-
9 MENTS.—Section 904 of the Electronic Fund Transfer
10 Act (15 U.S.C. 1693b) is amended by adding at the end
11 the following new subsection:

12 “(e) RESTRICTIONS ON OVERDRAFT PROTECTION
13 SERVICES AND FEES.—

14 “(1) IN GENERAL.—A financial institution that
15 holds a consumer’s account may not impose an over-
16 draft protection fee on the account in connection
17 with any payment of an electronic fund transfer ini-
18 tiated by the consumer at an automated teller ma-
19 chine operated by the financial institution in spite of
20 a lack of sufficient funds in the consumer’s account
21 to pay such electronic fund transfer, unless—

22 “(A) the consumer has affirmatively re-
23 quested such service pursuant to section
24 140(a)(1);

1 “(B) the financial has provided a notice to
2 the consumer, on the screen of the automated
3 teller machine, or on a paper notice issued from
4 such machine, after the transaction is initiated
5 and before the consumer is irrevocably com-
6 mitted to completing the transaction, that the
7 electronic fund transfer the consumer has re-
8 quested may initiate an overdraft protection fee,
9 together with the amount of any such fee;

10 “(C) the consumer elects to continue in the
11 manner necessary to effect the requested elec-
12 tronic fund transfer after receiving such notice;
13 and

14 “(D) the overdraft protection fee imposed
15 in connection with such transaction is clearly
16 disclosed in the written documentation of the
17 electronic fund transfer required by section
18 906(a).

19 “(2) DISCLOSURE OF ACCOUNT BALANCES.—In
20 the case of any financial institution that offers a
21 program or service under which the institution pays
22 any overdraft on a consumer’s account in exchange
23 for the imposition of an overdraft protection fee in
24 accordance with paragraph (1), the financial institu-
25 tion shall, in response to a balance inquiry initiated

1 by the consumer at an automated teller machine op-
2 erated by the financial institution, disclose only the
3 actual dollar balance in the consumer’s account at
4 the time of the request, which shall not include any
5 additional amount of credit or overdraft protection
6 the financial institution will pay under any agree-
7 ment with the consumer that permits the imposition
8 of the overdraft protection fee.

9 “(3) OVERDRAFT PROTECTION FEE DE-
10 FINED.—For purposes of this subsection, the term
11 ‘overdraft protection fee’ has the same meaning as
12 in section 103(cc)(1).”.

13 (c) EXPEDITED FUNDS AVAILABILITY ACT AMEND-
14 MENTS.—

15 (1) DEFINITION.—Section 602 of the Expedited
16 Funds Availability Act (12 U.S.C. 4001) is amended
17 by adding at the end the following new paragraph:

18 “(26) OVERDRAFT PROTECTION FEE.—The
19 term ‘overdraft protection fee’ has the same meaning
20 as in section 103(cc)(1) of the Truth in Lending
21 Act.”.

22 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
23 FEES.—Section 607 of the Expedited Funds Avail-
24 ability Act (12 U.S.C. 4006) is amended by adding
25 at the end the following new subsection:

1 “(f) RESTRICTIONS ON OVERDRAFT PROTECTION
2 FEES.—A depository institution may not—

3 “(1) impose an overdraft protection fee on an
4 account at such institution for paying any check
5 drawn on the account in spite of a lack of sufficient
6 funds in the account to pay such check or any simi-
7 larly activity unless the accountholder has affirma-
8 tively requested such service pursuant to section
9 140(a)(1) of the Truth in Lending Act; or

10 “(2) engage in a pattern or practice of delaying
11 the posting of any deposit in an account, or manipu-
12 lating the process of posting any check or other
13 debit against an account, for the purpose of initi-
14 ating 1 or more overdrafts that trigger payment by
15 the accountholder of an overdraft protection fee.”.

16 (d) FEDERAL RESERVE BOARD STUDY OF OVER-
17 DRAFT PROTECTION PROGRAMS OFFERED BY FINANCIAL
18 INSTITUTIONS.—

19 (1) STUDY REQUIRED.—

20 (A) IN GENERAL.—The Board of Gov-
21 ernors of the Federal Reserve System shall con-
22 duct a study of overdraft protection or avoid-
23 ance programs and services offered by financial
24 institutions to determine the extent to which
25 such programs or services are available to con-

1 sumers, the differences in operation and cost of
2 such programs or services, and the benefits and
3 risks of such programs or services for con-
4 sumers.

5 (B) AREAS FOR STUDY.—In conducting
6 the study under subparagraph (A), the Board
7 shall consider, among other issues—

8 (i) the criteria used by financial insti-
9 tutions in designing or selecting overdraft
10 protection programs and services;

11 (ii) the extent to which financial insti-
12 tutions exercise discretion on whether to
13 not to cover an overdraft and criteria used
14 in exercising such discretion;

15 (iii) the adequacy of information pro-
16 vided to customers regarding alternative
17 overdraft protection programs or services
18 and the cost and terms of such programs
19 and services;

20 (iv) the adequacy of disclosures in
21 promotions and advertising relating to
22 overdraft protection services;

23 (v) the extent to which overdraft pro-
24 tection programs and services are con-
25 ducted by third-party vendors, the basis

1 for structuring vendor compensation ar-
2 rangements for these programs and serv-
3 ices, and the impact, if any, of linking ven-
4 dor compensation to increases in fee rev-
5 enue on the quality and cost of overdraft
6 protection services; and

7 (vi) the feasibility of providing notice
8 in connection with point of sale debit
9 transactions that a transaction initiated by
10 the consumer will result in an overdraft
11 protection fee if completed by the con-
12 sumer and the potential benefit of such
13 disclosure to consumers.

14 (C) CONSULTATION REQUIRED.—The
15 Board of Governors of the Federal Reserve Sys-
16 tem shall—

17 (i) consult with the other Federal
18 banking agencies (as defined in section 3
19 of the Federal Deposit Insurance Act) and
20 the National Credit Union Administration
21 Board in formulating and conducting the
22 study required under subparagraph (A);
23 and

24 (ii) employ research methods and pro-
25 cedures, including consumer survey and

1 market tester programs, necessary to ad-
2 dress the issues required by subparagraph
3 (B).

4 (2) REPORT REQUIRED.—Before the end of the
5 1-year period beginning on the date of the enact-
6 ment of this Act, the Board of Governors of the
7 Federal Reserve System shall submit a report to the
8 Committee on Banking, Housing and Urban Affairs
9 of the Senate and the Committee on Financial Serv-
10 ices of the House of Representatives containing a
11 detailed summary of the finding and conclusions of
12 the study under this subsection, together with such
13 recommendations for legislative or administrative ac-
14 tions as the Board may determine to be appropriate.

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